FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 14 1940
CHARLES ELMORE CROPLEY
CLERK

No. 724

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO HEIGHTS TRUCKING CO., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 907

CHICAGO HEIGHTS TRUCKING CO., ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States and the Interstate Commerce Commission, appellants, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the final decree complained of is conferred by:

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U. S. Code, Tit. 28, Sec. 345).

211363—40

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

B. The final decree sought to be reviewed was entered November 7, 1939. The petition for appeal was filed and the order allowing the appeal was entered January 5, 1940.

C. Plaintiffs, 41 common carriers by motor vehicle subject to the Motor Carrier Act, 1935, and to the jurisdiction of the Interstate Commerce Commission thereunder, bring this suit to set aside the Commission's order of July 29, 1939, which, as amended, requires the carriers on or before November 10, 1939, to cancel out certain tariffs on the ground that such tariffs were unlawful. The tariffs named proportional rates[1] for the transportation of l. t. l. (less than truckload) shipments (all freight) between outlying marketing areas and named concentration points (Chicago, Indianapolis, South Bend, Muncie, Fort Wayne, and Evansville) immediately preceding or following the transportation of the shipment in a truckload or carload consignment.

---

[1] In the report herein of July 29, 1939, the Commission defined a proportional rate as follows: "* * * a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. Clearly, the proposed rates do not come within this definition of a proportional rate."

Tariffs similar to those involved in the Commission's order herein were filed in the summer of 1937 and rejected by the Bureau of Motor Carriers in a letter dated September 11, 1937, "upon several grounds" (Ex. 17, p. 1). The tariffs were subsequently refiled to become effective on December 1, 1937, and January 15, 1938. The Commission suspended the tariffs on its own motion from time to time and assigned the matter of their validity to an examiner for hearing. After elaborate proceedings, including full hearings and the consideration of voluminous briefs, Division 5 of the Commission, on December 14, 1938, found the proposed tariffs unlawful and directed their cancelation. Upon petition of complainants herein for reopening, the Commission as a body (11 members) heard oral arguments and on July 29, 1939, issued its report on reconsideration, once more finding the tariffs unlawful and directing their cancelation. Docket Investigation & Suspension M–247, *Proportional Rates between Chicago and Wisconsin Points,* 10 M. C. C. 556, 17 M. C. C. 573.

The plaintiffs filed this suit on September 14, 1939, praying that the Court annul and enjoin the Commission's order of July 29, 1939, on the principal grounds that:

1. The order is void because it interferes with the carriers' managerial judgment;
2. The Commission failed to make certain findings, and the findings it did make are insufficient to support its order;

3. The tariffs are in accord with law, are not unreasonable, discriminatory, or otherwise unlawful in any respect, and the Commission's action in ordering their cancelation was arbitrary, and

4. The order of the Commission is without evidence and contrary to the undisputed evidence.

The answers of the United States and the Interstate Commerce Commission denied the material allegations of the complaint.

Final hearing was held before a statutory court of three judges on October 9, 1939, and findings of fact, conclusions of law, and final decree were filed November 7, 1939, holding the Commission's order invalid and granting the relief sought. No written opinion was filed. The final decree permanently enjoins, annuls, and sets aside the Commission's order.

D. The questions presented are substantial and of public importance. Whether the courts have power to substitute their judgment for that of the Commission upon matters purely administrative appears to us to be the important question.

E. The following cases sustain the jurisdiction of the Supreme Court to review the decree of the district court:

Atlantic Coast Line R. Co. v. *United States*, 284 U. S. 288.

Chicago Junction Case, 264 U. S. 258.

Ches. & Ohio Ry. Co. v. *United States*, 283 U. S. 35.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 282 U. S. 311.

N. Y. Central Securities Co. v. *United States*, 287 U. S. 12.

United States v. *Maher*, 307 U. S. 148.

Copy of the findings of fact, conclusions of law and final decree entered by the District Court are appended hereto.

ROBERT H. JACKSON,
Solicitor General.
WILLIAM J. CAMPBELL,
United States Attorney.
THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 907

CHICAGO HEIGHTS TRUCKING COMPANY, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the above entitled cause, the Court makes the following

FINDINGS OF FACT

1. Plaintiffs are common carriers of property by motor vehicle and subject to the Motor Carrier Act, 1935, and operate over public highways in the States of Illinois, Wisconsin, and Indiana.

2. In October and December, 1936, plaintiffs caused three tariffs to be filed with the Interstate Commerce Commission, naming rates on less-than-carload interstate shipments of "all freight" (with certain exceptions not necessary to name) immediately preceding or following transportation thereof as part of a consolidated truckload or carload con-

signment between (a) Chicago, Illinois, upon the one hand, and points in Wisconsin and Illinois, upon the other, and (b) Indianapolis, South Bend, Fort Wayne, Muncie, and Evansville, Indiana, upon the one hand, and points in Indiana within the respective trade areas of each of said cities, upon the other.

3. The aforesaid tariffs were suspended by the Commission, on its own motion, without complaint, by its orders of November 29, 1937, and January 14, 1938, and following the hearing provided in the Motor Carrier Act and a report by the examiner recommending that the tariffs be found lawful, a division of the Commission found the rates named in the tariffs to be unlawful and ordered the tariffs cancelled. Upon rehearing, the entire Commission affirmed this order, but upon findings substantially different from those made by the division.

4. While the tariffs are not restricted and apply to the traffic of all shippers, the principal traffic which will be carried under the suspended rates is what is called by the Commission "freight forwarder traffic." This traffic consists of individual less-than-carload shipments of freight originating or terminating at points far distant from the lines and routes of plaintiffs, and carried in a coordinated railroad and motor-carrier service under the control and direction of common carrier organizations known as "freight forwarders."

5. The method by which said freight is carried is as follows:

Plaintiffs jointly with other carriers, forwarder, rail and motor, maintain a nation-wide sales and service organization whereby individual less-than-carload shipments are collected at the door of the shipper from all producing points in each marketing area, concentrated by motortruck at the market center of the area, consolidated with other similar shipments, and moved in consolidated carlot or truck-lot consignments to a break-bulk station located at the center of the consuming trade area from which the individual less-than-carload shipments are distributed to the door of the consignee. Plaintiffs perform the concentration and distribution service, between concentration and break-bulk stations located in the cities named in paragraph 2, supra, and points within the trade area of each.

6. This coordinated transportation of plaintiffs has resulted in a more complete, dependable and reliable service generally superior to either all-rail or all-truck competitive services, as a result of which it is widely patronized by shippers.

7. The "forwarder traffic," which would be carried under these tariffs, at the present time and for a number of years prior, is and was carried under joint tariffs of plaintiffs, freight forwarding carriers, and other motor carriers, now on file with the Commission, naming through rates on the less-than-carload shipments from ultimate point of

origin to ultimate destination, which tariffs were ordered stricken from the files of the Commission by an order issued at about the same time as the order which this proceeding seeks to annul and enjoin.

8. Plaintiffs' compensation, in the form of divisions of the joint rates described in paragraph 7, presently and formerly received for their services in connection with the transportation of such traffic, is practically identical with the compensation which plaintiffs would receive for like services under the suspended tariffs.

9. Plaintiffs contemporaneously maintain what are called "local rates" upon less-than-carload freight, originating or terminating at the points named in paragraph 2 hereof, which differ from the suspended rates in that such freight shipments are classified into a number of different classes, each taking a different rate, some of which rates are higher and some lower than the suspended rates, which latter rates apply on all freight, regardless of classification. The average revenue per 100 pounds derived by plaintiffs from such local rates, upon the whole, is less than the average revenue per 100 pounds which will be produced by the suspended rates for movement between the same points.

10. The service which will be provided by plaintiffs under the suspended rates is identical with the service which they now perform in the carriage of through interline shipments under existing joint

tariffs with other motor carriers with whom plaintiffs connect, and the suspended rates are substantially higher than the divisions which plaintiffs receive for their services for the carriage of such interline traffic.

11. The service which plaintiffs will be required to provide under the suspended tariffs is different and less than it is required to provide for traffic moving at its tariffs of local rates, in that (a) no solicitation or billing is necessary; (b) but one instead of two terminal services (collection, delivery, and station platform handling) is required; and (c) relatively fewer deliveries are required; and (d) the expense of providing such service under the suspended tariffs will be less than the expense of the service required in the transportation of such local traffic.

12. The traffic which will be handled under the suspended rates consists of through interline shipments, and either originates or terminates on plaintiffs' lines, whereas the traffic handled at plaintiffs' local rates consists of local shipments which both originate and terminate on plaintiffs' lines.

13. Movement of the traffic which will be carried at the suspended rates is affected and influenced by commercial, economic, and competitive conditions, applicable to long-distance commerce between points on plaintiffs' routes and points in all other states, whereas the movement of plaintiffs' local traffic is influenced by the local commer-

cial conditions applicable in the restricted trade areas about each of the cities named in paragraph 2.

14. There is no evidence or claim that any particular person, port, gateway, locality, or description of traffic will be injured or damaged, or occasioned any loss by operation of the suspended tariffs.

15. The suspended tariffs explicitly state the applicable rates and accurately describe the service to be rendered (and the rules applicable thereto) for such rates.

16. The suspended tariffs plainly state the charges which are proposed to be made thereby and the time when such charges will take effect.

17. Enforcement of the order of the Commission will deprive plaintiffs of a large and profitable part of their revenues.

18. Plaintiffs have duly invoked and exhausted all their rights and remedies at law before seeking relief in equity.

19. The case was submitted to the Court at the conclusion of final hearing, the Court having received in evidence certified copies of the transcript of testimony, exhibits, petitions, and tariff rules which constituted the record before the Commission.

The Court thereupon announces the following

CONCLUSIONS OF LAW

I. Section 216 (d) of the Motor Carrier Act does not condemn as unlawful rates which discriminate

in favor of a person or traffic without unjustly discriminating against any particular person, port, gateway, locality, or description of traffic.

II. The compensation to be charged under the suspended tariffs is not less than that charged under plaintiffs' tariffs of local rates.

III. The service to be rendered by plaintiffs under the suspended tariffs is unlike service rendered by plaintiffs in the transportation of local traffic.

IV. The traffic to be carried by plaintiffs under the suspended tariffs is unlike traffic carried by them under their tariffs naming local rates.

V. The traffic to be carried by plaintiffs under the suspended tariffs will be transported under circumstances and conditions dissimilar to those under which local traffic is carried.

VI. The suspended rates do not unduly or unreasonably prefer or advantage any particular person, port, gateway, locality, or description of traffic in any respect whatever, nor subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination, undue or unreasonable prejudice or disadvantage in any respect whatsoever, in violation of section 216 (d) or any other section of the Motor Carrier Act, 1935.

VII. The suspended tariffs do not not contravene section 216 (d), 217 (a), 217 (c) or any other section or provision of the Motor Carrier Act, 1935.

VIII. The order of the Commission is based upon an erroneous and unlawful interpretation of

sections 216 (d), 217 (a), and 217 (c) of the Motor Carrier Act, 1935.

IX. The finding of the Interstate Commerce Commission that the above-described tariffs are unlawful is not supported by substantial evidence, and is contrary to the evidence.

X. Enforcement of said order of the Commission will irreparably injure plaintiffs.

XI. The order of the Interstate Commerce Commission, directing the cancellation of the suspended tariffs, is arbitrary, unlawful, and void.

XII. The relief for which plaintiffs pray should be granted.

OTTO KERNER,
United States Circuit Judge.
CHARLES E. WOODWARD,
United States District Judge.
JOHN P. BARNES,
United States District Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1940